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7 BEIBEI CAI,  
8 Plaintiff,  
9 v.  
10 VISA INC., et al.,  
11 Defendants.

Case No. 24-cv-08220-NW

**ORDER GRANTING MOTION TO  
DISMISS WITH LEAVE TO AMEND  
AND DENYING MOTION TO STRIKE**

Re: ECF No. 45, 46

12  
13 On September 12, 2025, Defendants Visa Inc. (“Visa”), Ryan McInerney, Chris Suh,  
14 Vasant Prabhu, Alfred F. Kelly, Jr., Peter Andreski, Oliver Jenkyn, and Jack Forestell filed a  
15 motion to dismiss and a motion to strike Plaintiffs’ class action complaint. ECF Nos. 45, 46.<sup>1</sup>  
16 Having considered the parties’ briefs and the relevant legal authority, the Court concludes oral  
17 argument is not required, *see* N.D. Cal. Civ. L.R. 7-1(b), VACATES the hearing scheduled for  
18 December 17, 2025, GRANTS the motion to dismiss with leave to amend, and DENIES the  
19 motion to strike as moot.

20 **I. REQUEST FOR JUDICIAL NOTICE**

21 In connection with their motion to dismiss, Defendants ask the Court to take judicial notice  
22 of seven separate exhibits. These exhibits fall into two categories (1) Visa stock historic stock  
23 price information at ECF No. 45-2 (titled “Exhibit 1”) and (2) analyst reports at ECF Nos. 45-3 to  
24 45-8 (titled “Exhibits 2-7”). Plaintiffs only oppose judicial notice of the analyst reports. ECF No.  
25 51.

26 In support of their opposition to Defendants’ motion to dismiss and motion to strike,

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28 <sup>1</sup> Record citations are to material in the Electronic Case File (“ECF”); pinpoint citations are to the  
ECF-generated page numbers at the top of documents.

1 Plaintiffs request that the Court either take judicial notice or incorporate by reference two exhibits:  
2 (1) Visa’s Form 10-K for the fiscal year ending on September 30, 2023 at ECF No. 48-2 (titled  
3 “Exhibit 1”), and (2) Visa’s amended answer to the complaint filed by the United States  
4 Department of Justice (“DOJ”) in the pending antitrust case discussed later in this Order at ECF  
5 No. 49-2 (also titled “Exhibit 1”). ECF No. 50.

6 When assessing the sufficiency of a complaint under Federal Rule of Civil Procedure  
7 12(b)(6), district courts generally cannot consider material outside of the pleadings. *Khoja v.*  
8 *Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018). However, courts considering a  
9 motion to dismiss that is governed by the PSLRA may consider “documents incorporated into the  
10 complaint by reference, and matters of which a court may take judicial notice.” *Tellabs, Inc. v.*  
11 *Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007).

12 A court may take judicial notice of facts “not subject to reasonable dispute” because they  
13 are either (1) “generally known within the trial court’s territorial jurisdiction; or (2) can be  
14 accurately and readily determined from sources whose accuracy cannot reasonably be questioned.”  
15 Fed. R. Evid. 201. Accordingly, “[a] court may take judicial notice of matters of public record  
16 without converting a motion to dismiss into a motion for summary judgment.” *Khoja*, 899 F.3d at  
17 999 (citing *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001)). But a court cannot take  
18 judicial notice of disputed facts contained in such public records. *Id.*

19 Because Plaintiffs do not oppose, and the Court finds it appropriate to do so, the Court  
20 judicially notices Visa’s stock historic stock price information at ECF No. 45-2. At this time, the  
21 Court declines to rule on the remainder of the parties’ requests for judicial notice, as the Court did  
22 not rely on any of those documents in resolving the present motions.

## 23 II. BACKGROUND<sup>2</sup>

### 24 A. The Parties

25 Defendant Visa processes and facilitates debit and credit card transactions for businesses  
26 and consumers. The issues underpinning this case relate to Visa’s debit card transaction network,

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28 <sup>2</sup> The factual background is drawn from Plaintiffs’ class action complaint (“CAC”). See ECF No.  
38.

1 “the communications infrastructure that facilitates secure, real-time payment between businesses  
2 and consumers’ bank accounts.” ECF No. 38 ¶ 50.

3 Lead Plaintiff Beibei Cai purchased Visa common stock during the putative class period.  
4 Cai brings this suit on behalf of himself and other similarly situated persons or entities  
5 (“Plaintiffs”) who purchased or otherwise acquired Visa common stock between March 2, 2023,  
6 and September 23, 2024 (“Class Period”).

7 Defendants Ryan McInerney (Chief Executive Officer), Chris Suh (Chief Financial  
8 Officer), Vasant Prabhu (former Vice Chairman & CFO), Alfred F. Kelly, Jr. (former CEO and  
9 Chairman), Peter Andreski (Global Corporate Controller and Chief Accounting Officer), Oliver  
10 Jenkyn (Group President), and Jack Forestell (Chief Product and Strategy Officer) (“Individual  
11 Defendants”) worked at Visa in various roles during the Class Period.

## 12       **B.     Factual Allegations**

### 13       **1.     Debit Transactions**

14 Despite running the nation’s largest debit network, Visa does not issue debit cards.  
15 Instead, Visa contracts with card issuing banks (“Issuers”) that issue cards that use the Visa  
16 network. Visa also contracts with merchants’ banks (“Acquirers”) so that the merchant can accept  
17 debit cards that use the Visa network. Visa, via its debit network, provides a “Rail,” or “method  
18 by which the consumer and Acquirers communicate with each other to transfer the funds and  
19 complete the transaction.” *Id.* ¶ 52.

20 To facilitate transactions, Visa’s debit network issues a unique account identifier that can  
21 be accepted by participating merchants. A transaction where a consumer uses a debit card in  
22 person at a merchant is known as a “Card-Present Transaction” and one where a consumer uses a  
23 debit credential online or over the phone is known as a “Card-Not-Present Transaction.”

24 When debit card transactions initially took off in the 1990s, merchants installed PIN pads  
25 for customers to enter their 4-digit PIN numbers to make purchases. These transactions were  
26 processed over PIN Networks like, STAR, NYCE, and Pulse. “Unlike the PIN Networks, which  
27 processed debit transactions over Rails designed for ATM networks, Visa processed debit  
28 purchases over Visa’s existing credit card Rails.” *Id.* ¶ 59. Because of this and Visa’s internal

1 rules initially requiring merchants to accept both its credit and debit cards, Visa's debit cards rose  
2 in popularity.

3 **2. Legal Framework**

4 In 2010, Congress passed the "Durbin Amendment" as part of the Dodd-Frank Wall Street  
5 Reform and Consumer Protection Act. The Federal Reserve's rule known as "Regulation II"  
6 implemented the Durbin Amendment. Regulation II required each debit card be enabled with at  
7 least two unaffiliated networks – typically a "Front-of-Card Network" (where the network is  
8 branded on the front of the debit card) and a "Back-of-Card Network" like Mastercard's Maestro  
9 or a PIN Network. In October 2022, the Federal Reserve adopted the "Regulation II  
10 Clarification," mandating that the unaffiliated network be enabled for Card-Not-Present  
11 transactions.

12 Plaintiffs allege this legal and regulatory framework aimed to promote competition and  
13 undercut Visa's dominance of the debit transaction market, but that this aim failed. In support,  
14 Plaintiffs note that Visa's network fees are higher than that of PIN Networks, yet Visa continues to  
15 process nearly two-thirds of all debit transactions.

16 **3. DOJ Investigation**

17 In March 2021, DOJ's Antitrust Division began investigating Visa's debit practices. Visa  
18 disclosed the fact of this investigation in its SEC filings, and disclosed that the civil investigative  
19 demand "focuse[d] on U.S. debit and competition with other payment methods and networks."  
20 ECF No. 38 ¶ 210. On September 24, 2024, DOJ sued Visa in the Southern District of New York  
21 alleging four separate violations of the Sherman Antitrust Act. *See United States of America v.*  
22 *Visa Inc.*, Case No. 1:24-CV-07214, ECF No. 1 ("DOJ Complaint").

23 As Plaintiffs note in their complaint, the DOJ Complaint alleges that Visa used its market  
24 power to circumvent the intent of the Durbin Amendment and the Regulation II Clarification.  
25 DOJ alleges that Visa exploited transactions that for various reasons could not be processed with  
26 the unaffiliated Back-of-the-Card Network and had to be routed over Visa's debit network (called  
27 "Non-Contestable Transactions"). DOJ asserts that Visa charges artificially high "Rack Rates" for  
28 Non-Contestable Transactions in an effort to pressure merchants and Acquirers to route nearly all

1 eligible debit transactions through Visa to avoid paying exorbitant fees. Known as “Cliff Pricing,”  
2 DOJ alleges that Visa charges lower prices for every transaction routed to Visa, as long as the total  
3 volume of transactions exceeds a certain threshold. If the merchant or Acquirer failed to meet the  
4 threshold, then under Cliff Pricing, Visa charged the high Rack Rate on all transactions routed  
5 through its debit network, including Non-Contestable Transactions, making it uneconomical to use  
6 non-Visa debt networks. This behavior, in addition to early termination fees, clawback provisions,  
7 and other penalties allegedly imposed by Visa, created de facto exclusive arrangements.

8 **C. Challenged Statements**

9 In short, Plaintiffs argue that “it was false and misleading for Defendants to repeatedly  
10 represent that the Regulation II Clarification was having little impact on Visa’s routing volume  
11 because the value that merchants and Acquire[r]s put on certain features of Visa’s debit network  
12 outweighed the price advantage of alternative networks.” ECF No. 38 ¶ 21. Plaintiffs assert the  
13 actual reason for Visa’s high routing volume was due to its allegedly anticompetitive antics.

14 Plaintiffs allege that several statements were false and misleading when made. The  
15 challenged statements fall into three categories: (1) statements from earnings calls and investor  
16 conferences about the Regulation II Clarification, (2) statements from investor conferences about  
17 financial technology (“fintech”), and (3) statements in Visa’s public filings. The allegedly false  
18 and misleading statements are summarized below.

19 **1. Earnings Call and Investor Conference Statements About the  
20 Regulation II Clarification**

21 First, Plaintiffs allege that several of Visa’s statements on earnings calls and at investor  
22 conferences regarding the impact of the Regulation II Clarification were materially false and  
23 misleading. Plaintiffs argue that statements like “we expect minimal impact,” *see* ECF No. 38  
24 ¶ 127, “[w]e continue to believe that merchants are going to want to choose to route transactions  
25 to Visa for a number of reasons,” *see id.* ¶ 131, and “Reg II has not measurably impacted volumes  
26 so far, *see id.* ¶ 137, were “materially false and misleading when made because [they] failed to  
27 disclose that an important part of Visa’s response to the Regulation II Clarification was to use  
28 Cliff Pricing and the related tactics.” *Id.* ¶¶ 128, 131, 133, 135, 139, 141, 145, 147, 150, 152, 154,

1 156, 158, 162.

2 **2. Investor Conference Statements About Fintech**

3 Second, Plaintiffs allege that two statements made at two different conferences about the  
4 risk and opportunity to Visa from fintech were materially false and misleading. In particular,  
5 Plaintiffs allege Defendant Prabhu's statement in May 2023 about Apple "riding [Visa's]  
6 network" was materially false and misleading because he "failed to disclose that Visa was paying  
7 Apple hundreds of millions of dollars a year not to develop a competing product." *Id.* ¶¶ 163-64.  
8 Additionally, Plaintiffs allege that Defendant McInerney's May 2024 statement that Visa was  
9 "going to open up [its] network" and help fintechs "achieve their objectives" was materially false  
10 and misleading because in reality "Visa prevented fintechs, such as PayPal and Square, from  
11 disintermediating them by threatening high fees for the transactions that the fintechs needed Visa's  
12 rails to process." *Id.* ¶¶ 165-66.

13 **3. Statements in Visa's Public Filings**

14 Third and finally, Plaintiffs allege that Visa's SEC filings from November 15, 2023,  
15 onward containing the statements that "[o]ur revenues and profits are dependent on our client and  
16 merchant base, which may be costly to win, retain and develop" and "[o]ur financial institution  
17 clients and merchants can reassess their commitments to us at any time or develop their own  
18 competitive services" were "materially false and misleading when made because Visa's financial  
19 institution clients and merchants could not, in practice, reassess their commitments to Visa at any  
20 time because Visa used Cliff Pricing and the related tactics." ECF No. 38 ¶¶ 168-69.

21 **D. The Filing of the DOJ Complaint**

22 After the DOJ Complaint was filed, "the price of Visa's stock fell \$15.85 per share, or  
23 approximately 5.5%, from \$288.63 per share when the market closed on September 23, 2024, to  
24 \$272.78 per share when the market closed on September 24, 2024. On September 25, 2024,  
25 Visa's stock fell another \$3.15 per share to close at \$269.63 for a total two-day loss of  
26 approximately 6.6% that harmed investors." *Id.* ¶ 23.

27 **E. Procedural History**

28 On November 20, 2024, Beibei Cai filed a class action complaint alleging claims under

1 Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (“the Exchange Act”) against  
2 Visa, Ryan McInerney, Chris Suh, and Peter Andreski. ECF No. 1. On the same day, Cai caused  
3 a notice of pendency of the action to be published on *Business Wire*. ECF No. 7. In response to  
4 the published notice, the Court received a motion for the appointment of lead plaintiff and lead  
5 counsel. ECF No. 14. On April 23, 2025, the Court granted Beibei Cai’s motion to be lead  
6 plaintiff and appointed Rosen Law Firm, P.A. as lead counsel. ECF No. 31.

7 On July 15, 2025, lead plaintiffs filed a consolidated class action complaint on behalf of  
8 himself and other similarly situated persons or entities who purchased or otherwise acquired Visa  
9 common stock during the Class Period. ECF No. 38. Defendants moved to dismiss on September  
10 12, 2025, and moved to strike the amended complaint. ECF Nos. 45, 46. Plaintiffs opposed both  
11 motions, *see* ECF Nos. 48, 49, and Defendants filed replies in further support, *see* ECF Nos. 52,  
12 53.

13 **III. LEGAL STANDARD**

14 **A. Motion to Dismiss**

15 To survive a motion to dismiss, a plaintiff must plead “enough facts to state a claim to  
16 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The  
17 Court must “accept all factual allegations in the complaint as true and construe the pleadings in the  
18 light most favorable to the [plaintiff].” *Knivele v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005).  
19 However, the tenet that a court must accept a complaint’s allegations as true “is inapplicable to . . .  
20 [t]hreadbare recitals of a cause of action’s elements, supported by mere conclusory statements.”  
21 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

22 “Securities fraud class actions must [also] meet the higher, exacting pleading standards of  
23 Federal Rule of Civil Procedure 9(b) and the Private Securities Litigation Reform Act (PSLRA).”  
24 *Oregon Pub. Emps. Ret. Fund v. Apollo Grp. Inc.*, 774 F.3d 598, 604 (9th Cir. 2014). Under Rule  
25 9(b) and the PSLRA, a complaint must “state with particularity facts giving rise to a strong  
26 inference that the defendant acted with the required state of mind” with respect to the alleged false  
27 statements or omissions, and a party must “state with particularity the circumstances constituting  
28 fraud or mistake.” 15 U.S.C. § 78u-4(b)(2)(A); Fed. R. Civ. P. 9(b). If the complaint does not

1 satisfy the PSLRA's pleading requirements, the Court must grant a motion to dismiss the  
2 complaint. 15 U.S.C. § 78u-4(b)(3)(A).

3 **B. Motion to Strike**

4 Under Federal Rule of Civil Procedure 12(f), a "court may strike from a pleading an  
5 insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R.  
6 Civ. P. 12(f). The purpose of a Rule 12(f) "motion to strike is to avoid the expenditure of time and  
7 money that must arise from litigating spurious issues by dispensing with those issues prior to  
8 trial." *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973 (9th Cir. 2010).

9 **IV. DISCUSSION**

10 Section 10(b) prohibits any act or omission resulting in fraud or deceit in connection with  
11 the purchase or sale of any security. "To plead a claim under [S]ection 10(b) and Rule 10b-5, the  
12 Plaintiff[ ] must allege: (1) a material misrepresentation or omission; (2) scienter; (3) a connection  
13 between the misrepresentation or omission and the purchase or sale of a security; (4) reliance; (5)  
14 economic loss; and (6) loss causation." *City of Dearborn Heights Act 345 Police & Fire Ret. Sys.*  
15 *v. Align Tech., Inc.*, 856 F.3d 605, 613 (9th Cir. 2017) (quoting *Oregon Pub. Emps. Ret. Fund*, 774  
16 F.3d at 603).

17 Defendants contend that Plaintiffs fail to adequately plead falsity, scienter, and loss  
18 causation. ECF No. 48. The Court begins with loss causation.

19 **A. Loss Causation**

20 The PSLRA requires the plaintiff to prove "that the act or omission of the defendant . . .  
21 caused the loss for which the plaintiff seeks to recover damages." 15 U.S.C. § 78u-4(b)(4). "Loss  
22 causation" refers to the "causal connection between the material misrepresentation and the loss."  
23 *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 342 (2005). "To prove loss causation, plaintiffs need  
24 only show a 'causal connection' between the fraud and the loss . . . by tracing the loss back to 'the  
25 very facts about which the defendant lied.'" *Mineworkers' Pension Scheme v. First Solar Inc.*,  
26 881 F.3d 750, 753 (9th Cir. 2018) (internal citations omitted). Stated another way "[t]o establish  
27 loss causation in a fraud-on-the-market case, the plaintiff must show that after purchasing her  
28 shares and before selling, the following occurred: (1) 'the truth became known,' and (2) the

1 revelation caused the fraud-induced inflation in the stock’s price to be reduced or eliminated.” *In*  
2 *re BofI Holding, Inc. Sec. Litig.*, 977 F.3d 781, 789 (9th Cir. 2020). While Plaintiffs are not  
3 required to prove loss causation at the motion to dismiss stage, they must (1) allege a “significant”  
4 drop in price, and (2) allege with particularity facts plausibly suggesting that the fraud caused the  
5 stock drop, as opposed to some other fact. *In re Facebook, Inc. Sec. Litig.*, 87 F.4th 934, 953-54  
6 (9th Cir. 2023).

7 Defendants argue that Plaintiffs fail to plead loss causation for two reasons. ECF No. 45 at  
8 14-24. First, Defendants assert that Plaintiffs fail to show that any fraud was revealed. *Id.* at 16-  
9 21. Second, Defendants argue that Visa’s quick and sustained stock price recovery after the  
10 modest drop refutes any inference of loss causation. *Id.* at 21-24. Plaintiffs respond to both  
11 arguments. ECF No. 48 at 27-31. Accepting the CAC’s allegations as true, as the Court must,  
12 Plaintiffs have not adequately pleaded loss causation.

13 First, Plaintiffs fail to allege a causal connection between Defendants’ allegedly material  
14 misrepresentations and the loss, or the impact on the stock price. At the pleadings stage, while a  
15 “plaintiff is not required to show that a misrepresentation was the sole reason for the investment’s  
16 decline in value, the complaint must, however, set forth allegations that if assumed true, are  
17 sufficient to provide the defendant with some indication that the drop in stock price was causally  
18 related to the defendant’s financial misstatements.” *Metzler Inv. GMBH v. Corinthian Colleges,*  
19 *Inc.*, 540 F.3d 1049, 1062 (9th Cir. 2008) (cleaned up). In the CAC, Plaintiffs fail to provide an  
20 indication that the combined 6.6% drop on September 24 and September 25, 2024, in Visa’s stock  
21 price was in response to allegedly fraudulent misstatements about the Durbin Amendment or the  
22 Regulation II Clarification. The gravamen of Plaintiffs’ complaint is that “Visa’s true tactics”  
23 were revealed to the market when “the news broke concerning the contents of the DOJ’s lawsuit,  
24 first in news articles, and then in the DOJ Complaint itself.” ECF No. 48. However, the timing of  
25 these allegedly corrective disclosures undercuts Plaintiff’s argument. As noted in the complaint,  
26 the DOJ began investigating Visa’s debit practices in March 2021, a fact Visa disclosed to  
27 investors at that time. ECF No. 38 ¶¶ 14, 209. Yet, Plaintiffs assert that articles published the  
28 evening of September 23, 2024, after the market closed, reporting that the DOJ planned to

1 imminently file suit against Visa for antitrust violations caused Visa's stock to drop approximately  
2 5.5% when the market closed on September 24, 2024, without connecting these articles to  
3 Plaintiffs' theory of fraud. More is needed to meet the pleading standard, particularly as to the  
4 allegedly corrective disclosures that occurred before the filing of the DOJ complaint.

5 Second, Plaintiffs fail to allege sufficient facts to support a plausible inference of loss  
6 causation considering the modest stock price drop followed by a "quick and sustained price  
7 recovery." *Wochos v. Tesla, Inc.*, 985 F.3d 1180, 1198 (9th Cir. 2021). As alleged and  
8 acknowledged by Plaintiffs, Visa's stock price fell 6.6% over two trading days near the end of  
9 September 2024. ECF No. 38 ¶¶ 178, 179. However, in the days after the drop, Visa's stock price  
10 rebounded. ECF No. 45-2 at 12. By September 27, 2024, the price already surpassed the closing  
11 price on September 24 (\$275.17 on September 27, 2024 as opposed to \$272.78 on September 24,  
12 2024) and just a few weeks later, on October 17, 2024, Visa's stock price fully rebounded and  
13 exceed the price before the drop (\$290.39 on October 17, 2024 as opposed to \$288.63 on  
14 September 23, 2024). *Id.* Such a quick and sustained price recovery after the modest September  
15 2024 drop refutes Plaintiffs' inference that the alleged concealment of the impact of the  
16 Regulation II Clarification on Visa's debit network was causally connected to the loss.

17 Because Plaintiffs fail to adequately plead loss causation, the CAC fails to state a claim  
18 under Section 10(b) and Rule 10b-5. Accordingly, Court does not reach the questions of falsity  
19 and scienter. The Court GRANTS Defendants' motion to dismiss with leave to amend, as the  
20 Court cannot conclude at this juncture that amendment would be futile.

21 **B. Section 20(a)**

22 Because Plaintiffs have not adequately alleged a primary violation of Section 10(b) or Rule  
23 10b-5, their control person claims under Section 20(a) necessarily fail. *See Prodanova v. H.C.*  
24 *Wainwright & Co., LLC*, 993 F.3d 1097, 1113 (9th Cir. 2021).

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1       **V. CONCLUSION**

2                  For the foregoing reasons, Defendants' motion to dismiss is GRANTED with leave to  
3 amend. If Plaintiffs wish to file an amended complaint correcting the deficiencies identified  
4 above, they shall do so within 30 days of the date of this Order, or by January 2, 2026.

5                  Because Plaintiffs' complaint is dismissed, Defendants' motion to strike is DENIED as  
6 moot.

7       **IT IS SO ORDERED.**

8                  Dated: December 10, 2025



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10                  Noël Wise  
United States District Judge